

Assembly Bill No. 1928

CHAPTER 120

An act to amend Sections 17710, 17730, and 17732 of, and to add Section 17732.2 to, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor July 13, 2012. Filed with
Secretary of State July 13, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1928, Cook. Foster homes: residential capacity.

The California Community Care Facilities Act provides for the licensing and regulation of community care facilities, including, among others, foster family homes, small family homes, and foster family agencies, as defined. Under existing law, a violation of the act is a misdemeanor.

Existing law limits foster family homes and small family homes to 6 or fewer foster children, but allows a licensing agency to increase that limit to 8 foster children under specified circumstances. Existing regulations of the State Department of Social Services require that these licensing agencies include biological, adoptive, and guardianship children in the number of children for whom these homes are licensed to provide care and supervision. Existing law also requires the licensing agency to take into consideration how many children, in addition to the children already living in the home, the caregiver is capable of providing care and supervision to and that the home can accommodate.

Under existing law, the State Department of Social Services is required to develop a program to establish specialized foster care homes for children with special health care needs. No more than 2 foster care children are permitted to reside in a specialized foster care home, except that an additional foster child, or children, may be permitted if specified conditions are met.

This bill would specify that, in determining the licensed capacity of a specialized foster family home or a specialized certified family home, the State Department of Social Services shall consider all adoptive, biological, and foster children, and children in guardianship living in the home, in order not to exceed a total of 6 children living in the home. The bill also would make conforming and technical changes.

This bill would state that its provisions are declaratory of existing law.

The people of the State of California do enact as follows:

SECTION 1. Section 17710 of the Welfare and Institutions Code is amended to read:

17710. Unless otherwise specified in this part:

(a) “Child with special health care needs” means a child, or a person who is 22 years of age or younger who is completing a publicly funded education program, who has a condition that can rapidly deteriorate resulting in permanent injury or death or who has a medical condition that requires specialized in-home health care, and who either has been adjudged a dependent of the court pursuant to Section 300, has not been adjudged a dependent of the court pursuant to Section 300 but is in the custody of the county welfare department, or has a developmental disability and is receiving services and case management from a regional center.

(b) “County” means the county welfare department.

(c) “Department” means the State Department of Social Services.

(d) “Individualized health care plan team” means those individuals who develop a health care plan for a child with special health care needs in a specialized foster care home, as defined in subdivision (i), or group home, which shall include the child’s primary care physician or other health care professional designated by the physician, any involved medical team, and the county social worker or regional center worker, and any health care professional designated to monitor the child’s individualized health care plan pursuant to paragraph (8) of subdivision (c) of Section 17731, including, if the child is in a certified home, the registered nurse employed by or under contract with the certifying agency to supervise and monitor the child. The child’s individualized health care plan team may also include, but shall not be limited to, a public health nurse, representatives from the California Children’s Services Program or the Child Health and Disability Prevention Program, regional centers, the county mental health department, and where reunification is the goal, the parent or parents, if available. In addition, if the child is in a specialized foster care home, the individualized health care plan team may include the prospective specialized foster parents, who shall not participate in any team decision pursuant to paragraph (6) of subdivision (c) of Section 17731 or pursuant to subparagraph (C) of paragraph (1) of subdivision (a), or clause (i) of subparagraph (B) of paragraph (2) of subdivision (a), of Section 17732.

(e) “Director” means the Director of Social Services.

(f) “Level of care” means a description of the specialized in-home health care to be provided to a child with special health care needs by the foster family.

(g) Medical conditions requiring specialized in-home health care require dependency upon one or more of the following: enteral feeding tube, total parenteral feeding, a cardiorespiratory monitor, intravenous therapy, a ventilator, oxygen support, urinary catheterization, renal dialysis, ministrations imposed by tracheostomy, colostomy, ileostomy, or other medical or surgical procedures or special medication regimens, including injection, and intravenous medication.

(h) “Specialized in-home health care” includes, but is not limited to, those services identified by the child’s primary physician as appropriately administered in the home by any one of the following:

(1) A parent trained by health care professionals where the child is being placed in, or is currently in, a specialized foster care home.

(2) Group home staff trained by health care professionals pursuant to the discharge plan of the facility releasing the child where the child was placed in the home as of November 1, 1993, and who is currently in the home.

(3) A health care professional, where the child is placed in a group home after November 1, 1993. The health care services provided pursuant to this paragraph shall not be reimbursable costs for the purpose of determining the group home rate under Section 11462.

(i) “Specialized foster care home” means any of the following foster homes where the foster parents reside in the home and have been trained to provide specialized in-home health care to foster children:

(1) Licensed foster family homes, as defined in paragraph (5) of subdivision (a) of Section 1502 of the Health and Safety Code.

(2) Licensed small family homes, as defined in paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code.

(3) Certified family homes, as defined in subdivision (d) of Section 1506 of the Health and Safety Code, that have accepted placement of a child with special health care needs who is under the supervision and monitoring of a registered nurse employed by, or on contract with, the certifying agency, and who is either of the following:

(A) A dependent of the court under Section 300.

(B) Developmentally disabled and receiving services and case management from a regional center.

SEC. 2. Section 17730 of the Welfare and Institutions Code is amended to read:

17730. The department shall develop a program to establish specialized foster care homes for children with special health care needs with persons specified in subdivision (h) of Section 17710. The department shall limit the use of group homes for children with special health care needs pursuant to subdivisions (c) and (d) of Section 17732. The program shall conform to the requirements set forth in this chapter, and shall be integrated with the foster care and child welfare services programs authorized by Article 5 (commencing with Section 11400) of Chapter 2 of Part 3 and Chapter 5 (commencing with Section 16500) of Part 4.

The department, in administering the licensing program, shall not evaluate or have any responsibility for the evaluation of the in-home health care provided in specialized foster care homes or group homes.

This program shall be conducted by county welfare departments in conformance with procedures established by the department in accordance with this chapter.

SEC. 3. Section 17732 of the Welfare and Institutions Code is amended to read:

17732. (a) No more than two foster children with or without special health care needs shall reside in a specialized foster care home with the following exceptions:

(1) A specialized foster care home may have a third foster child with or without special health care needs placed in that home provided that the licensed capacity, as determined by the department pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code) is not exceeded and provided that all of the following conditions have been met:

(A) The child's placement worker has determined and documented that no other placement is available.

(B) For each child in placement and the child to be placed, the child's placement worker has determined that his or her psychological and social needs will be met by placement in the home and has documented that determination. New determinations shall be made and documented each time there is an increase or turnover in foster care children and the two-child capacity limit is exceeded.

(C) The individualized health care plan team responsible for the ongoing care of each child with special health care needs involved has considered the number of adoptive, biological, and foster children, and children in guardianship living in the home and determined that the two-child limit may be exceeded without jeopardizing the health and safety of that child, and has documented that determination. New determinations shall be made and documented each time there is an increase or turnover in foster care children and the two-child capacity limit is exceeded.

(2) A licensed small family home, but not a certified home, may exceed the two-child placement limit and accept children with or without special health care needs up to the licensed capacity as determined by the department pursuant to paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code if the conditions in paragraph (1) have been met for both the third foster child and each foster child placed thereafter, and the following additional conditions have been met:

(A) At least one of the children in the facility is a regional center client monitored in accordance with Section 56001 and following of Title 17 of the California Code of Regulations.

(B) Whenever four or more foster children are physically present in the facility, the licensee of the small family home has the assistance of a caregiver to provide specialized in-home health care to the children except that:

(i) Night assistance shall not be required for those hours that the individualized health care plan team for each child with special health care needs has documented that the child will not require specialized medical services during that time.

(ii) The department may determine that additional assistance is required to provide appropriate care and supervision for all children in placement. The determination shall only be made after consultation with the appropriate regional center and any appropriate individual health care teams.

(iii) On-call assistance is available at all times to respond in case of an emergency. The on-call assistant shall meet the requirements of paragraph (5) of subdivision (c) of Section 17731.

(iv) The home is sufficient in size to accommodate the needs of all children in the home.

(b) Notwithstanding Section 1523 of the Health and Safety Code, a foster family home which has more than three children with special health care needs in its care as of January 1, 1992, and which applies for licensure as a small family home in order to continue to provide care for those children, shall be exempt from the application fee.

(c) Except for children with special health care needs placed in group homes before January 1, 1992, no child with special health care needs may be placed in any group home or combination of group homes for longer than a short-term placement of 120 calendar days. The short-term placement in the group home shall be on an emergency basis for the purpose of arranging a subsequent placement in a less restrictive setting, such as with the child's natural parents or relatives, with a foster parent or foster family agency, or with another appropriate person or facility. The 120-day limitation shall not be extended, except by the approval of the director or his or her designee. For children placed after January 1, 1992, the 120-day limitation shall begin on the effective date of the amendments to this section made during the 1993 portion of the 1993–94 Regular Session.

(d) A child with special health care needs shall not be placed in a group home unless the child's placement worker has determined and documented that the group home has a program that meets the specific needs of the child being placed and there is a commonalty of needs with the other children in the group home.

(e) The Legislature finds and declares that the amendments to this section made by the act that added this subdivision are declaratory of existing law.

SEC. 4. Section 17732.2 is added to the Welfare and Institutions Code, to read:

17732.2. (a) In determining the licensed capacity of a specialized foster family home or a specialized certified family home, the department shall consider all adoptive, biological, and foster children, and children in guardianship living in the home, in order not to exceed a total of six children living in the home.

(b) The Legislature finds and declares that this section is declaratory of existing law.